IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

M/s Chemicure Laboratories Pvt. Ltd. & Anr.

Vs.

State of Rajasthan through the Drugs Inspector (I.B.)

S.B.CR.MISC. PETITION NO.757/2002

DATE OF ORDER :: November 13, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.J.P.Joshi, for the petitioners.
Mr.Ashok Upadhyaya, P.P. for the State.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners seek quashing of criminal proceedings in complaint case No.127/91.

I have heard learned counsel for the petitioners and the Public Prosecutor. Carefully gone through the order dt. 24.7.2001 passed by the Additional Sessions Judge, Pali (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 28.8.1998

passed by the Chief Judicial Magistrate, Pali (for short 'the trial court' hereinafter) was dismissed.

It is contended by the learned counsel for the petitioners that the Drugs Inspector took the sample of Alargan Elixin Promothazine Hydrochloride on 11.7.1989, from the Central Medical Store and the sample was sent to Central India Pharmocopia Laboratory, Rajnagar, Gaziabad for being analyzed on 13.7.1989. The sample on being analyzed, the Govt. Analyst at Gaziabad on 15.9.1989, it was found misbranded. A copy of public analyst report was sent to the petitioners vide letter dt. 3.10.1989, which was received by the petitioners on 17.10.1989. The petitioners requested for retesting/re-analysis by the Central Drugs Laboratory, Calcutta. However, the petitioners did not receive any communication as to whether the second sample is sent for analysis by the Central Laboratory. The petitioners sent another letter on 25.10.1989 requesting for the examination of the sample by Central Drugs Laboratory, Calcutta. It appears that according to the learned counsel, the same was not sent for being analyzed by the Central Drugs Laboratory, Calcutta. However, the complaint was filed by the Drugs Inspector before the trial court on 17.2.1990. The petitioners were summoned and ultimately the summons were served on the petitioners on 4.10.1992. The sample was not

sent for being analyzed by the Central Drugs Laboratory, Calcutta till its expiry. The drug in question was manufactured in August, 1988 and the expiry date of which is February, 1990 as is evident from the complaint itself.

Learned counsel for the petitioners submits that the petitioners have a valuable right under section 3(25) of the Drugs and Cosmetic Act, 1940 (for short 'the Act' hereinafter) to adduce evidence in contravention of the Govt. Analyst Report. Section 25 of the Act reads as under:

"**25. Reports of Government Analysts.--(1)** The Government analyst to whom a sample of any drug [for cosmetic] has been submitted for test or analysis under sub-section (4) of Section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2)The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken [and another copy to the person, if any whose name, address and other particulars have been disclosed under Section 18-A], and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a

Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken [or the person whose name, address and other particulars have been disclosed under Section 18-A] has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contraversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contraversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug [or cosmetic] produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

In the instant case, from the record, it appears that the consent/sanction to prosecute the petitioner was accorded on 30.12.1989 and thereafter for the reasons best known to the complainant the complaint was not promptly filed before the trial court but it was filed as back as on 17.2.1990, whereas the expiry date of drugs in question is up to February, 1990.

Sub-section (3) of section 25 of the Act in clear terms provides that any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18-A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contraversion of the report.

Sub-section (4) of section 25 of the Act provides that

unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contraversion of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused cause the sample of the drug or cosmetic produced before the Magistrate under sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

In the instant case, there is evidence on record that soon after the receipt of the report of public analyst, the petitioner expressed their intention for sending the sample to be analyzed by the Central Drug Laboratory, Calcutta. The petitioners made repeated request i.e. on 3.10.1989 and 25.10.1989 but neither the Drugs Inspector sent the sample to be analyzed by the Central Drug Laboratory nor filed the complaint within the reasonable time and when the complaint was filed on 17.12.1990 even from that date, if the petitioners were to exercised the right to get the sample analyzed by the Central Drug Laboratory, by then the life of the drugs had already

expired. In the circumstances, therefore, in my view the petitioners have been deprived of valuable right to get the sample analyzed by the Central Drug Laboratory, which has been denied. In view of the facts stated above, to allow the proceedings would nothing but abuse of process of any court and therefore, in order to secure the ends of justice, the proceedings against the present petitioners deserves to be quashed.

Consequently, the criminal misc. petition is allowed. Order impugned dt. 28.8.1998 passed by the Chief Judicial Magistrate, Pali and order dt. 24.7.2001 passed by the Additional Sessions Judge, Pali are set aside and the proceedings against the present petitioners stand quashed. Stay petition also stands disposed of.

[H.R.PANWAR],J.

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